



MOUNTAIN STATES LEGAL
— FOUNDATION —
FREE COUNTRY. FREE PEOPLE.

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May 1, 2024

Ms. Ina Bryant
Interim Chief Campus Counsel, UCLA
Office of the Campus Counsel
University of California Los Angeles
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Re: *Notice of Constitutional Duties and Potential Personal Liability*

Ms. Bryant,

We are attorneys at Mountain States Legal Foundation, a non-profit law firm that protects and defends the United States Constitution. Our mission is to secure the rights of Americans to live freely throughout the country, by litigating the cause for freedom. We have been contacted by Young Americans for Freedom (“YAF”), a chapter affiliate of Young America’s Foundation. YAF is a registered student organization at UCLA (the “University”), and entitled to host events on campus; yet the University has failed to approve and facilitate YAF’s planned May 15, 2024 on-campus event featuring speaker Robert Spencer.

Given that the event is only two weeks away, and that the window for adequate pre-event publicity is rapidly closing, we ask that you instruct the University’s staff to issue an immediate approval for the talk to go forward. We further ask that you respond to this letter by May 3, 2024, confirming (1) that the University will comply with its obligations to avoid viewpoint discrimination under the First Amendment; (2) that the University will not enable an illegal “heckler’s veto” by leftwing activists who may react violently to YAF’s presentation; and (3) that the University understands its officials are personally liable for their ongoing unconstitutional conduct.

Analysis

On April 16, 2024—a month prior to the planned date—YAF informed University officials that it would host Mr. Spencer’s presentation. YAF has submitted all necessary applications and forms, and has provided all information

requested by the University. The University has in the past been responsive to YAF's event hosting inquiries, but this time it erected numerous roadblocks and delays to the approval process for Mr. Spencer's presentation.

While the University has not come out and said so explicitly, it is apparent that its reluctance to proceed is due to the nature of Ms. Spencer's ideas. Mr. Spencer, the founder of *Jihad Watch*, will present a talk titled "Why Everything You Know About Palestine Is Wrong," that addresses common misconceptions about the Israel-Hamas war. Mr. Spencer's perspective stands in sharp contrast to the prevailing leftwing orthodoxy on many college campuses, including UCLA.¹

From the outset, UCLA has engaged in unexplained and discriminatory delays in approving YAF's application. Indeed, officials initially refused to provide any response whatsoever to numerous emails and other communications from YAF, and only agreed to have a meeting to discuss the application after YAF's chapter president threatened to appeal to the Office of the Chancellor.

In the meantime, beginning around April 24, 2024—well after YAF began the approval process and after UCLA had already failed to timely respond—an illegal "protest encampment" was erected on campus by anti-Israel activists. The activists have reportedly engaged in numerous acts of violence,² have blocked

¹ This is, of course, a key reason why it is so important that Mr. Spencer's views be heard on campus. See, e.g., *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2046 (2021) ("Democracy only works if we protect the 'marketplace of ideas.' . . . Thus, schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, 'I disapprove of what you say, but I will defend to the death your right to say it.'") (cleaned up); *id.* ("Schools are the nurseries of democracy."); *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005, 1016 (N.D. Cal. 2007) ("The core principles of the First Amendment acquire a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution's educational mission.") (cleaned up).

² See, e.g., <https://www.msn.com/en-us/news/other/anti-israel-protesters-at-ucla-attack-native-american-woman-opposing-hamas/ar-AA1nNbne?ocid=socialshare>; <https://www.msn.com/en-us/news/us/ucla-professor-nir-hoftman-there-is-no-law-and-order-here/vi-AA1nSBno?ocid=socialshare>; <https://jewishjournal.com/community/370832/thousands-attend-pro-israel-rally-at-ucla-to-support-jewish-students-while-surrounded-by-pro-palestinian-protesters/> ("Reports circulated on social media that a Jewish woman was assaulted by pro-Palestinian protesters and that pro-Israel protesters were pepper-sprayed by pro-Palestinian protesters."); see also <https://newsroom.ucla.edu/ucla-statement-about-activity-at-encampment-april-28> & <https://newsroom.ucla.edu/ucla-statement-on-disturbances-at-encampment> (UCLA statements acknowledging violence at

access by Jewish students and faculty to campus facilities,³ and have issued threats.⁴ Many of the activists are not UCLA students or faculty.⁵ All of them are in violation of numerous laws and UCLA policies.⁶

To date, UCLA has not effectively addressed the activists' illegal conduct. The "encampment" still stands, students and faculty who are disfavored by the activists are denied free access to their university, Jewish students are intimidated, and the campus has generally been taken over by outsiders.

Against this background, UCLA, when it finally deigned to respond to YAF, had the temerity to state that YAF's freedom of speech and ability to host Mr. Spencer's talk was in jeopardy due to the potential *threat of counter-protests by the encampment activists against YAF*. Indeed, the University informed YAF that its application will likely not be acted upon unless and until the "encampment is cleared," while at the same time providing no timetable whatsoever for when (or if) that will happen, or when approval for the event will be forthcoming. This is entirely unacceptable and illegal.

encampment).

³ <https://www.msn.com/en-us/news/us/jewish-ucla-student-blocked-from-class-says-incident-shows-pro-amas-takeover-of-universities/ar-AA1nWg8T?ocid=socialshare>; <https://www.cbsnews.com/losangeles/news/pro-palestinian-encampment-blocks-ucla-students-from-entering-library-during-midterms/>.

⁴ <https://jewishjournal.com/community/370770/ucla-hillel-on-pro-palestinian-encampment-jewish-students-feeling-the-intensity-of-the-situation/> ("Among the scenes from the encampment that have been posted to social media included pictures of Arabic words that were translated as 'Oh Qassam, oh beloved, we want to burn Tel Aviv' allegedly written on the ground.").

⁵ See e.g., <https://revcom.us/en/ucla-new-people-surge-forward-defend-student-encampment-against-zionist-thugs> ("revolutionary communist" newsletter reporting that "revcoms" and other "off-campus pro-Palestinian" groups entered the protest area, "pushed past the police line and flooded the area where [a permitted, lawful counter-demonstration by Jewish and pro-Israeli individuals was taking place].")(last visited Apr. 30, 2024)).

⁶ See, e.g., UCLA Regulations on Activities, Registered Campus Organizations, and Use of Properties ("Activities Regulations") at ¶¶ IV(B)(1), IV(B)(6), IV(B)(7), IV(B)(8), IV(D)(12), IV(F)(3), App'x 4 §§ 100004-100007 (defining criminal misdemeanor offenses for non-students/faculty/staff); UCLA Procedure 850.1 (Placement of Temporary Structures on the UCLA Campus); UCLA Policy 860 (Extracurricular Use of University Facilities).

First, it is clearly established that freedom of expression may not be limited due to the threat that an audience member may react violently. *Meinecke v. City of Seattle*, 2024 WL 1666696 at * 1 (9th Cir. 2024) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Consequently, if speech provokes wrongful acts on the part of hecklers, the government must deal with those wrongful acts directly; it may not avoid doing so by suppressing the speech.”) (cleaned up); *Mahanoy*, 141 S. Ct. at 2056 (Alito, J. concurring) (“If listeners riot because they find speech offensive, schools should punish the rioters, not the speaker. In other words, the hecklers don’t get the veto.”) (cleaned up); *Matal v. Tam*, 582 U.S. 218, 249 (2017) (the First Amendment is violated when speech is regulated based on the “expected reaction of the applicant’s audience.”) (Kennedy, J. concurring). Nor can UCLA impose additional fees or administrative burdens on YAF because the content of its expression “may require more police protection than less controversial speech.” *Cent. Fla. Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1525 (11th Cir. 1985); see also *Meinecke*, 2024 WL 1666696 at *6 (curbing speech due to the “potential reaction of listeners” is not a “time, place or manner” restriction).

These well-established rules are all the more apt in this case because *UCLA bears responsibility for allowing the threat to persist on campus in the first place*. UCLA has both the right and the duty to address the unlawful activity by encampment activists immediately.⁷ See, e.g., (Activities Regulations ¶¶ IV(B)(1), IV(B)(6), IV(B)(7), IV(B)(8), IV(D)(12), IV(F)(3), App’x 4 §§ 100004-100007; UCLA Procedure 850.1; UCLA Policy 860). The Constitution surely cannot countenance a university, with its special duty to protect the “marketplace of ideas,” to cite a disruptive potential of *its very own making* as a pretext for limiting peaceful speech, especially on controversial topics.

⁷ To be clear, MSLF does not advocate for restrictions on anyone’s freedom to express anti-Israel sentiments. We are staunch supporters of free speech, whatever the political valence might be. The encampment activists, however, are not exercising their right to free speech when they engage in conduct such as erecting illegal structures, engaging in violence and threats, blocking Jewish students from freely accessing campus facilities, and many other transgressions. Indeed, even UCLA’s official policies acknowledge this fundamental principle. See UCLA Student Affairs: Your First Amendment Rights As a Student at UCLA, available at <https://deanofstudents.ucla.edu/file/b06df921-414c-4bed-bf48-b3889f4aea8b> (“While individuals may exercise the constitutionally protected rights of speech and assembly on university grounds that are generally open to the public, these activities must not interfere with the orderly operation of the campus . . . Equally, interfering with the free expression of other individuals, such as disrupting a speech, cannot be tolerated.”).

Moreover, UCLA’s course of conduct as a whole—coddling *patently illegal and violent* leftwing “protestors” on the one hand, and imposing limitations on the *pure speech* of presenters with heterodox views on the other—cannot be viewed as anything other than discrimination on the basis of viewpoint. Put simply, UCLA tolerates illegal activity by some because they support the elimination of Israel, and at the same time, works tirelessly to impose roadblocks against actual speech and the exchange of ideas by others because they support Israel’s right to exist and to defend itself. This is the very antithesis of preserving the “marketplace of ideas” on a college campus. More to the point, it is unconstitutional viewpoint discrimination, which is a clearly established violation of the First Amendment. *See, e.g., Dodge v. Evergreen Sch. Dist. #114*, 56 F. 4th 767, 786 (9th Cir. 2022); *Cook v. Gwinnett Cnty. Sch. Dist.*, 414 F.3d 1313, 1321 (11th Cir. 2005); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1282 (11th Cir. 2004) (student “had the right to be free from viewpoint discrimination, and that right was clearly established (both in general as well as in the public school context)”; *Bowler v. Town of Hudson*, No. 05-11007-PBS, 2007 WL 9797643, at *3 (D. Mass. Dec. 18, 2007) (removal of posters because of conservative viewpoint violates clearly established prohibition on viewpoint discrimination); *Zamecnik v. Indian Prairie Sch. Dist. No. 204 Bd. of Educ.*, 619 F. Supp. 2d 517, 528 (N.D. Ill. 2007) (“The right of . . . students to not be subjected to speech restrictions based on viewpoint discrimination was well established as of 2006.”).

Separately, clearly established law states that a public university violates the First Amendment if its conduct has “[t]he practical effect” of “den[ying a student group] the use of campus facilities for meetings and other appropriate purposes,” or otherwise denying it the “means of communicating with . . . students,” and other members of the campus community. *Healy v. James*, 408 U.S. 169, 181-82 (1972). UCLA has violated this principle too.

Finally, lest there be any doubt, university officials are personally liable for constitutional violations in these contexts. Public officials are protected from civil rights lawsuits under 42 U.S.C. § 1983 only by *qualified* immunity. The doctrine of qualified immunity does not protect government officials from liability when they violate a clearly-established constitutional right, such as here. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Caving in to the heckler’s veto, engaging in viewpoint discrimination, or providing inadequate or ineffective security for a conservative event—on even a single occasion—all violate clearly-established constitutional law. *See also Business Leaders In Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021) (school officials were personally liable for their conduct that violated the First Amendment’s right to free speech); *Zamecnik*, 636 F.3d at 878 (awarding damages for infringement of constitutional rights).⁸

⁸ As you are likely aware, YAF previously brought [an action](#) against several officials at California State University—Los Angeles, in their personal capacity. The

Conclusion

We ask you to affirm your understanding of the principles discussed in this letter, such that you know that your actions must comply with the Constitution's protections for free speech. By providing this information, you may prevent further legal action.

/s/ James Kerwin

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University defendants wisely [settled](#) that action with YAF. More recently, the [University of Wisconsin – La Crosse](#) and the [University of Wisconsin – Madison](#) both shrewdly backed down, after receiving letters like this one.